

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CIVIL JURISDICTION**

**HBC 87 of 2021**

**BETWEEN:** **LOGABHI RAM REDDY** t/a **TAMBUA STORE** having its registered office at Savusavu, Nadi.

**PLAINTIFF**

**A N D:** **ARISE EARTHWORX (FIJI) PTE LTD** of formerly known as **ARISE EARTHWORX FIJI** having its registered office at Lot 112, Momi Bay, Shiu Raj Street, Banaras, Lautoka.

**FIRST DEFENDANT**

**A N D:** **ARISE CIVIL PTE (FIJI) LTD** having its operational office located at Savusavu, Momi, Nadi.

**SECOND DEFENDANT**

**A N D:** **KONTIKI FINANCE** having its registered office at Level 5, Tappoo city Building, Thomson Street, Suva.

**THIRD DEFENDANT**

Appearances: Ms. Swamy A. for the Plaintiff  
Ms. Veitokiyaki S. for the second Defendant  
Mr. Goundar K. for the third Defendant  
Date of Hearing: 03 October 2022  
Date of Ruling: 10 February 2023

## **R U L I N G**

### **BACKGROUND**

1. Before I deal with the application to amend the Statement of Defence, let me just set out the background based on the facts as pleaded in the Statement of Claim. In March 2017, Logabhi Ram Reddy (“Reddy”), Arise Earthworx (Fiji) Pte Ltd (“Arise No. 1”), and Arise Civil Pte (Fiji) Ltd (“Arise No. 2”) entered into an agreement. The said Agreement was partly oral, written and also by conduct. The subject matter was an excavator (registration number “I1920”).
2. Reddy was interested in purchasing the said excavator. According to paragraph 1 of the statement of claim, he was to purchase the said excavator from Arise No.1. This suggests that Arise No. 1 was the owner/importer of the said excavator.

3. The consideration for the excavator was \$35,000-00 (thirty-five thousand dollars). Arise No. 1 actually instructed Reddy to pay the said consideration to Arise No. 2.
4. So, on 13 March 2017, Reddy transferred \$35,000-00 by Bank Cheque to Arise No. 2 as instructed by Arise No.1. On the same day, Arise No. 1 gave possession of II920 to Reddy. However, while Arise No. 1 gave possession to Reddy, Arise No. 1 did not transfer II920 to Reddy.
5. On 27 March 2017, Arise No. 1 wrote to the Land Transport Authority (“LTA”) seeking to transfer II920 to Reddy. On 22 September 2017, LTA refused the application to transfer. The reason for LTA’s refusal was because II920 was a self-imported vehicle. Such vehicles, as a matter of policy, cannot be transferred within five years from first registration. According to Reddy, he was not aware of the 5-year transfer restriction policy.
6. In any event, faced with that hurdle, Reddy and Arise No. 1 then agreed verbally that Reddy will have possession of II920 for the remainder of the five-year period. At the end of the period, Arise No. 1 would then transfer the vehicle to Reddy free of any encumbrance. However, on 06 March 2018, unbeknownst to Reddy who still had possession of II920, Arise No. 1 had transferred the said vehicle to Arise No. 2. Arise No. 2 then offered II920 as security for loan advances from Kontiki Finance (“Kontiki”).
7. On 12 March 2021, Reddy applied to LTA to transfer the vehicle to his name. However, LTA rejected the application on account of the financial interest of Kontiki which was registered against II920.
8. On 19 March 2021, the Master granted an Order on the *ex-parte* application of Messrs. Patel & Sharma to allow Reddy to maintain possession of II920 (presumably, until the issues are determined finally).

### **STATEMENT OF DEFENCE**

9. Arise No. 1 has not filed a Statement of Defence. In fact, Arise No. 1 has never ever appeared in any call over date in Court before the Master or before me ever since the case was instituted.
10. Arise No. 2 is represented by Babu Singh & Associates. Its statement of defence was filed on 07 July 2021. On this “original” statement of defence, Arise No. 2 agrees to the following:
  - (a) that the excavator was to be sold to Reddy for \$35,000-00.
  - (b) that the excavator was to be transferred to Reddy after five years.
  - (c) that it (Arise No.2) did receive \$35,000 from Reddy.
11. However, Arise No. 2:
  - (a) denies that the directors and shareholders of Arise No. 1 are the same as Arise No. 2.
  - (b) Reddy was always aware that II920 was self-import.

- (c) Reddy was aware that II920 could not be transferred until after the five year period has lapsed.
- (d) denies that it (Arise No. 2) obtained any advances from Kontiki.
- (e) asserts that Arise No. 1 acted solely and dishonestly and without the consent of Arise No. 2 to use II920 as security for its loan.
- (f) Arise No. 2 is not aware of the financial interest of Kontiki over the said vehicle or the registration of that interest in the LTA records.

## **OBSERVATIONS**

12. I gather from the Court records before the Master that II920 is one of two or there other vehicles that were offered as security to Kontiki. I also gather that the balance of loan outstanding as of today would be well over \$100,000. I note that Kontiki has not bothered to file a Statement of Defence to this day. I also note that Mr. Goundar, for Kontiki, has not been forthcoming on facts in relation to some issues raised by the Master which only Kontiki could clarify. I have some questions of my own:

- (a) which of Arise No. 2 or Arise No. 1 is actually indebted to Kontiki.
- (b) why Kontiki thinks that it is a nominal defendant – when Reddy has a strong competing equitable claim over the charged asset?
- (c) II920 was offered as collateral, did Kontiki ever do a pre-loan collateral inspection as part of its due diligence?
- (d) had Kontiki done a due diligence pre-loan collateral inspection, and inspected II920 before accepting it as collateral, like most responsible financiers do, is it safe to say that Kontiki would certainly have been put on notice of the fact that (i) Reddy has had possession of the vehicle at all material times – and (ii) that Reddy had paid consideration of \$35,000 over the said vehicle – and (iii) hence, Reddy had an equitable interest over the vehicle.
- (e) will this eventually raise a priorities issue?

13. I am curious as to the relationship between Arise No. 1 and Arise No. 2. Reddy had pleaded at paragraph 2 of the Statement of Claim that:

..the Directors and shareholders of the 2<sup>nd</sup> Defendant is the same as the Directors and shareholders of the 1<sup>st</sup> Defendant.

14. Arise No. 2 refutes that allegation at paragraph 2 or its original statement of defence as follows:

The 2<sup>nd</sup> Defendant denies the contents of paragraph 2 of the Statement of Claim, and say that Mr. William Danford is the only director of the 1<sup>st</sup> defendant while Ms. Nada Issa was never the Director of the 1<sup>st</sup> Defendant Company.

15. While that raises more questions that it answers, I will leave it at that for now. What seems clear though is that, at the outset, Arise No. 1, which I presume from the pleadings is the registered owner of II920 – had directed Reddy to pay Arise No. 2 the consideration of \$35,000 – which

payment Arise No. 2 admits. What then is the real relationship between Arise No. 1 and Arise No. 2?

### **SUMMONS SEEKING LEAVE TO AMEND STATEMENT OF DEFENCE**

16. Before me now is a Summons to Amend Statement of Defence filed by Babu Singh & Associates on 17 March 2022. The Summons is filed pursuant to Order 15 Rule 4 and Order 20 Rule 3 of the High Court Rules 1988. It is supported by an affidavit of Nada Issa sworn on 16 March 2022.
17. Issa is one of the directors of Arise No. 2. She deposes that she is duly authorized to swear the affidavit for and on behalf of Arise No. 2. She further deposes of the advice she has received from her Solicitor about the need to amend Arise No. 2's statement of defence in order "*to show the true transaction in regards to my three (3) vehicles registration II917, II919, and II920*".
18. Issa then deposes in the rest of her affidavit the following:
  - (a) her belief that Reddy has misled and misrepresented to the Court that she, Issa, had breached an agreement and failed to discharge the financial interest of Kontiki.
  - (b) she is entitled to claim for damages against Reddy.
  - (c) she believes Reddy is misleading the Court by stating in an earlier affidavit filed in an earlier interlocutory application that she (Reddy) was not aware of the 5 year self-import rule by the LTA. A representative of the first defendant was present with Reddy when they were advised by an LTA officer about the 5 year import rule. Accordingly – Reddy had prior knowledge of the rule.
  - (d) the vehicle in question has, over the last five years, always been in the possession of Reddy. Therefore, Reddy's claim of loss of business and profit and income is a lie.
  - (e) Arise No. 1 and Kontiki are liable for damages and need to reply to the claims by Reddy. Arise No.1 was responsible for the loan and put Issa's three vehicles as collateral security with Kontiki for its loan.
19. Issa annexes to her affidavit a copy of the proposed statement of defence.
20. Kontiki has filed an affidavit of Bhavishna Chand sworn on 24 May 2022 and 27 July 2022. Reddy has filed an affidavit on 27 June 2022. Nada Issa swore another Affidavit in Reply on 04 August 2022.
21. Generally, the courts will allow amendment of pleading for the purpose of determining the real question in controversy between the parties to any proceeding or of correcting any error or defence in any proceeding (see Stephens v Nunnink [2005] FJHC 515; HBC0204/2004S (7 September 2005); the Supreme Court Practice 1988 comments on Or. 20/05).
22. I am of the view that granting leave now will serve the above purpose.

**ORDERS**

- (a) Leave granted to the second defendant to file and serve in seven days the amended statement of defence annexed in the affidavit supporting the application.
- (b) The plaintiff is to file and serve a Reply 21 days thereafter.
- (c) Costs to the plaintiff which I summarily assess at \$850-00 (eight hundred and fifty dollars only)
- (d) Case adjourned to **16 March 2023** for mention only.



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Anare Tuilevuka  
**JUDGE**  
Lautoka

10 February 2023